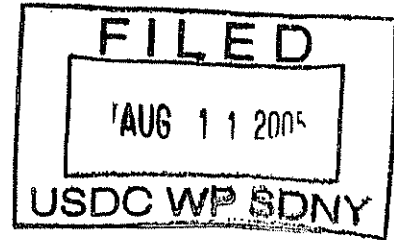


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
JAMES MAHONEY, as the Director and on
behalf of the TRANSPORT WORKERS UNION
RETIREEES ASSOCIATION,

Plaintiff,

Civil Action No. _____

-against-

PETITION FOR REMOVAL

J.J. WEISER AND COMPANY, INC.,

05 CIV. 7117

Defendant.
-----X

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Defendant J.J. WEISER AND COMPANY, INC. ("Petitioner"), by and through its attorneys, TRAUB EGLIN LIEBERMAN STRAUS LLP, hereby files this petition, pursuant to 28 U.S.C. §1446 and Local Rule 81.1, to remove the foregoing cause to the United States District Court for the Southern District of New York and respectfully states as follows:

1. A civil action was commenced and is now pending in the Supreme Court of the State of New York, County of New York in which James Mahoney is plaintiff and Petitioner is the sole defendant. The action is styled *James Mahoney, as the Director and on behalf of the Transport Workers Union Retirees Association v. J.J. Weiser and Company, Inc.*, Index No. 05-602751, a copy of which is annexed hereto as Exhibit "A." Petitioner was served with process in the action on August 2, 2005.

2. This is a civil suit seeking various relief for damages sustained by plaintiff resulting from Petitioner's involvement with an ERISA-governed employee benefit plan. Accordingly, such causes of action are preempted by ERISA pursuant to 29 U.S.C. § 1144(a). Furthermore, there is

currently an action before Judge Mukasey entitled *Toussaint, et al. v. JJ Weiser Inc, et al.*, index number 04 CV 2592, which was filed in United States District Court, Southern District of New York by plaintiff on April 5, 2004, a copy of which is annexed hereto as Exhibit "B." The same causes of action plaintiff now files in New York State Supreme Court, were specifically dismissed by Judge Mukasey as being preempted by ERISA, in an order dated February 9, 2005, a copy of which is annexed hereto as Exhibit "C."

3. This action is one in which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1441. The allegations involve Petitioner's alleged management and/or administration of an ERISA-governed employee benefit plan. Therefore, removal is proper pursuant to ERISA, 29 U.S.C. § 1144(a), in that the causes of action and the relief sought in the complaint filed in state court have been specifically preempted.

4. This petition is timely in that it is filed within thirty (30) days of receipt by Petitioner of the Complaint. Petitioner has not appeared in the state court action.

5. Written notice of this petition for removal will be served on plaintiff promptly after the filing of this petition, as is required by law.

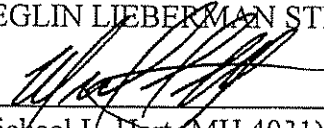
6. A true and correct copy of this petition will be filed with the Clerk of the Supreme Court of the State of New York, New York County, promptly after the filing of this petition, as is required by law.

7. By filing this petition, Petitioner does not waive any defense which may be available to it.

WHEREFORE, Petitioner prays that this action proceed in this Court as an action properly removed thereto.

Dated: Hawthorne, New York
August 11, 2005

TRAUB EGLIN LIEBERMAN STRAUS LLP

By: 
Michael L. Hart (MH 4031)
Attorneys for Defendant J.J. Weiser and
Company, Inc.
Mid-Westchester Executive Park
Seven Skyline Drive
Hawthorne, New York 10532
(914) 347-2600

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Christina Golino, being duly sworn, deposes and says:

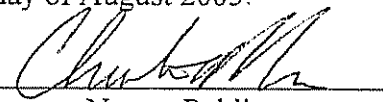
That the deponent is not a part to the within action and is over 18 years of age.

That on the 11th day of August 2005, deponent served the within **PETITION FOR REMOVAL** upon the attorney(s) for the respective party(ies) in this action, at the address listed below, such address designated by said attorney for that purpose via **United States Postal Service**, by depositing same in a properly addressed wrapper, in an official depository under the exclusive care and custody of United States Postal Service.

TO: Larry Magarick, Esq.
KENNEDY, JENNIK & MURRAY, P.C.
Attorneys for Plaintiffs
113 University Place
New York, New York 10003
(212) 358-1500


CHRISTINA GOLINO

Sworn to before me this 11th
day of August 2005.


Notary Public

CHRISTOPHER RUSSO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02RU6128715
QUALIFIED IN WESTCHESTER COUNTY
COMMISSION EXPIRES JUNE 13, 20 09